

ESTTA Tracking number: **ESTTA248243**

Filing date: **11/11/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Excel Tire & Wheel Corp.
Granted to Date of previous extension	11/12/2008
Address	P.O. Box 1044 Walnut, CA 91788 UNITED STATES
Attorney information	Michael R. Adele Allen Matkins 12348 High Bluff Drive Suite 210 San Diego, CA 92130 UNITED STATES madele@allenmatkins.com Phone: (949) 235-1534

Applicant Information

Application No	77278567	Publication date	07/15/2008
Opposition Filing Date	11/11/2008	Opposition Period Ends	11/12/2008
Applicant	Huffy Corporation 225 Byers Road Miamisburg, OH 45342 UNITED STATES		

Goods/Services Affected by Opposition

Class 012. All goods and services in the class are opposed, namely: bicycles

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3209878	Application Date	07/08/2003
Registration Date	02/20/2007	Foreign Priority Date	NONE
Word Mark	BLACKWIDOW		

Design Mark	BLACKWIDOW
Description of Mark	NONE
Goods/Services	Class 012. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 Tires especially designed for all terrain vehicles

Attachments	76530454#TMSN.gif (1 page)(bytes) Excel BLACKWIDOW NOTICE OF OPPOSITION (NOO filed w TTAB).pdf (6 pages)(175580 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael R. Adele/
Name	Michael R. Adele
Date	11/11/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/278567 BLACK WIDOW
Filed: September 13, 2007
International Class: 12
Published in the *Official Gazette* of July 15, 2008
Extension of Time to Oppose Granted Opposer to: November 11, 2008

EXCEL TIRE AND WHEEL CORP.,)	
)	
Opposer,)	
)	
vs.)	Opposition No. _____
)	
HUFFY CORPORATION,)	
)	
Applicant.)	
_____)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, EXCEL TIRE AND WHEEL CORP. ("Opposer"), a California Corporation with a principal place of business at 21003 Commerce Pointe Drive, Walnut, California 91788, believes that it will be damaged by the registration of the trademark shown in Application Serial No. 77/278567, and hereby opposes the same.

Upon information and belief, HUFFY CORPORATION ("Applicant") is an Ohio Corporation located at 225 Byers Road, Miamisburg, Ohio 45342.

Applicant filed Application Serial No. 77/278567 (the "Applicant's Mark") for the "BLACK WIDOW" trademark on September 13, 2007, in connection with "bicycles" in International Class 12. Applicant's trademark was published for opposition in the Official Gazette on June 11, 2008. Opposer filed a request for extension of time to file a Notice of

Opposition on July 31, 2008, which was granted, and Opposer now has until November 12, 2008 to file this Notice of Opposition.

STATUTORY AND COMMON LAW GROUNDS FOR OPPOSITION

1. Registration and Applications. Opposer has standing to oppose the Applicant's Mark based on Opposer's statutory rights in its BLACKWIDOW federal trademark. Opposer is the owner of the following BLACKWIDOW registration, a copy of which is annexed hereto: BLACKWIDOW: U.S. Registration No. 3,209,878 in connection with "tires especially designed for all terrain vehicles" in International Class 12, which recites a date of first use in commerce of July 1, 2002; this trademark Registration No. 3,209,878 is valid and subsisting;

2. Common Law Rights. Opposer also has standing to oppose the Applicant's Mark based on Opposer's common law rights in its trademarks. These include the trademark BLACKWIDOW for use in connection with tires and related products. Opposer has used the BLACKWIDOW mark since at least as early as July 1, 2002. Opposer has continued to use the BLACKWIDOW mark and build fame throughout the U.S. in the BLACKWIDOW mark. This use has been valid and continuous and has not been abandoned. Opposer's BLACKWIDOW mark has been popular and well known for 6 years and the products sold and offered in connection therewith have been the subject of substantial advertising and promotional activities. Trademarks containing the term "BLACKWIDOW" are distinctive and have acquired secondary meaning through Opposer's use. These trademarks are therefore entitled to strong protection under trademark law and would be damaged by the registration of the trademark "BLACK WIDOW" shown in the Applicant's Mark.

3. Opposer's use in commerce of its BLACKWIDOW mark in connection with its goods is 5 years' prior to September 13, 2007, the filing date of the Applicant's Mark.

4. Opposer's trademarks and trade names reflect the extensive goodwill and consumer recognition built up by Opposer in the BLACKWIDOW mark through substantial amounts of time and effort in the advertising and promotion of its goods. Opposer has offered goods in association with the BLACKWIDOW mark extensively and continuously in commerce in the United States since as early as July 1, 2002. This use has been valid and continuous and has not been abandoned.

5. Opposer is the owner of all rights in and to the BLACKWIDOW mark for the goods set forth above.

6. Upon information and belief, Applicant was aware of the Opposer's BLACKWIDOW mark when Applicant selected its claimed trademark BLACK WIDOW shown in the Applicant's Mark, and intended and intends to use the same in such a manner as to trade on the goodwill of the Opposer's BLACKWIDOW mark in the United States.

7. The goods covered under the Applicant's Mark are for "bicycles" in International Class 12. Opposer's registration cover the following goods: "tires especially designed for all terrain vehicles." The goods provided by Opposer under its BLACKWIDOW mark and the goods to be provided by Applicant under the Applicant's Mark are so related that Applicant's Mark will likely cause confusion or mistake, or will deceive or falsely suggest an association with Opposer.

8. The goods used by Opposer for many years and as proposed by Applicant in Applicant's Mark both relate to consumer vehicles used for recreational purposes and bear nearly identical names. As such, they are sufficiently related so as to cause a likelihood of confusion in the minds of consumers regarding origin, source and/or affiliation.

9. Because of the very similar nature of the trademarks and the related nature of the goods of the respective parties, Applicant's Mark so resembles the Opposer's BLACKWIDOW mark in spelling, pronunciation, usage, goods, channels of trade and consumers, that Applicant's Mark will likely cause confusion or mistake, or will deceive or falsely suggest an association with Opposer.

10. If Applicant is permitted to use and register Applicant's Mark for its goods, as specified in the Applicant's Mark, the resulting likelihood of confusion, mistake, deception, or false association will cause irreparable damage to the goodwill and consumer recognition that Opposer has built up in its BLACKWIDOW Mark.

11. Applicant's proposed use of Applicant's Mark interferes with the Opposer's use of its BLACKWIDOW mark and will cause confusion in connection with and may negatively impact Opposer's goodwill and free use of its trademarks. Registration of Applicant's Mark by Applicant will seriously damage Opposer under Section 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d).


12. Moreover, Applicant's proposed use of Applicant's mark will dilute, and thereby diminish the value of, Opposer's BLACKWIDOW mark, thereby violating Section 43(c) of the United States Trademark Act.

WHEREFORE, Opposer prays that said Applicant's Mark Serial No. No. 77/278567 be rejected, that no registration be issued thereon to Applicant and that this opposition be sustained in favor of Opposer. Please charge the filing fee for one Class of \$300 to our Deposit Account No. 504183 (Allen Matkins).

Please address all correspondence to Michael R. Adele, Esq., ALLEN MATKINS, 12348
High Bluff Drive, Suite 210, San Diego, California 92130.

Respectfully submitted,

Date: November 11th, 2008

By: 

Michael R. Adele
Randall K. Broberg
Allen Matkins Leck Gamble Mallory & Natsis LLP
12348 High Bluff Drive, Suite 210
San Diego, California 92130


Attorneys for Opposer

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Opposer EXCEL TIRE AND WHEEL CORP's Notice of Opposition was served by First Class Mail, Postage Prepaid, to the following:

Thomas W. Flynn
Wood, Herron & Evans, L.L.P.
441 Vine Street
2700 Carew Tower
Cincinnati, Ohio 45202-2917

on this 11th day of November, 2008.

By : 

Michael R. Adele